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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

AURIO A. MATOS

LLOYD SANTIAGO-SANTOS and LOURDES
RODRIGUES-BONET

For Construction Permit for a New
FM Station on Channel 293A in
Culebra, Puerto Rico

MM Docket No. 93-89

File No. BPH-911114MS

File No. BPH-911115MP

RECEIVED

APR 4 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Review Board

PETITION FOR LEAVE TO AMEND

Aurio A. Matos ("Matos"), by his counsel and pursuant to Section 73.3522 of the Commission's Rules, respectfully petitions for leave to amend his application in compliance with Section 1.65. By this amendment, Matos reports that the FAA has, with respect to his proposed new site, requested a reduction in tower height to allow further study on the feasibility of the site. Matos has consented to the reduced tower height and, upon FAA clearance, will promptly amend his application to specify the reduced height. The FAA is presently conducting the further study. In support of his petition, Matos states as follows:

1. Matos first received a copy of the FAA Acknowledgement on April 1, 1994. See Statement of Aurio A. Matos attached as Exhibit A. The Acknowledgement, dated March 16, 1994, states that Matos' proposed tower height of 210 feet poses a hazard to instrument altitudes, but that at a reduced height of 99 feet, the FAA will conduct a further study of Matos' proposed site to determine if the site is usable at the reduced height. See FAA Acknowledgement of

No. of Copies rec'd
List A B C D E

0 2 11

Proposed Construction or Alteration dated March 16, 1994 attached as Exhibit B.

2. Matos authorized counsel to commission the further FAA study. See Letter from Scott C. Cinnamon to Armando Castro attached as Exhibit B. The FAA has circulated the proposal for public comment and expects the comment period to last 21 days with a prompt decision thereafter.

3. Matos has consented to the reduced tower height and pledges to promptly prepare and submit the appropriate engineering amendment upon issuance of a Determination of No Hazard from the FAA.

4. Although the Mass Media Bureau filed a Motion to Dismiss the prompt notification of the FAA's acknowledgement which Matos submitted to the Commission on April 1, 1994 pursuant to § 1.65, Matos had actually planned to file the instant supplemental Petition in any event. Matos believes this Petition renders the Bureau's Motion moot, except to the point concerning the discrepancy in coordinates between the FAA's acknowledgement and those in Matos' FCC amendment.

5. Counsel for Matos was advised by the FAA that a conversion is made by the FAA when using coordinates provided by the FCC, due to a different methodology used by the FAA to determine coordinates for geographic locations. The FCC uses NAD 27 and the FAA uses NAD 83. As an example, Exhibit D is a copy of an FAA Determination of No Hazard listing two sets of coordinates for the same site, one being the FCC coordinates (NAD27) and the other

being the FAA coordinates (NAD 83). In fact, the FAA has recently amended FAA Form 7460-1, the Notice of Proposed Construction of Alteration form, to include an area for the FAA to list NAD 83 coordinates, in addition to the FCC NAD 23 coordinates. See Exhibit E.

6. The FAA assured the undersigned that the site proposed by Matos and the site studied by the FAA is the same. Bureau counsel has advised the undersigned that he, too, was advised by the FAA on this point

7. Good cause exists for the acceptance of this amendment. The amendment is being proffered in a timely manner, is not the result of a voluntary action by Matos, will not cause the addition of parties or issues to the proceeding, will not prejudice other parties and will result in no comparative advantage to Matos. See Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970)

WHEREFORE, it is respectfully requested that Matos' proposed amendment be accepted.

BROWN, NIETERT & KAUFMAN
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 887-0600

April 14, 1994

Respectfully submitted,
AURIO A. MATOS



Scott L. Cinnamon
His Attorney

-M E M O R A N D U M-

TO: Federal Communications Commission
FROM: Aurio A. Matos
RE: Amendment of Application BPH-911114MS
DATE: April 8, 1994

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I respectfully amend my application to include the FAA letter of March 16, 1994 regarding Aeronautical Study No. 91-ASO-0194-OE. I first received a copy of the FAA letter from my consulting engineer on April 1, 1994.

That letter indicates that if I reduce the proposed antenna height above ground level from 210 feet to 99 feet, a further study will be done to determine whether, at the 99 foot height, an antenna could be located at the site.

By this amendment, I also report that I have authorized my attorney to ask the FAA to conduct a further study of the site I have proposed with an antenna height of 99 feet.

I also report to the Commission that I propose amending the engineering proposal in my FCC application to change the proposed height of my antenna from 210 feet to 99 feet above ground level. I have commissioned my consulting engineer to prepare the necessary engineering study if the FAA approves.


Aurio A. Matos



U.S. Department
of Transportation
Federal Aviation
Administration

Southern Region

Exhibit B

P.O. Box 20536
Atlanta, Georgia 30320

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE	MSL	AGL	AMSL
CULEBRA	PR	18-19-02.84 065-18-46.57	476	210	686

AURIO MATOS BARRETO

AERONAUTICAL STUDY
No: 94-ASO-0194-OE

P. O. BOX 847
MAYAGUEZ, PR 00709

Type Structure: ANTENNA TOWER 106.5 MHZ, 6 KW ERP, 4-BAY

The Federal Aviation Administration hereby acknowledges receipt of notice dated 01/10/94 concerning the proposed construction or alteration contained herein.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction would exceed FAA obstruction standards and further aeronautical study is necessary to determine whether it would be a hazard to air navigation. Pending completion of any further study, it is presumed the construction would be a hazard to air navigation.

Further study may be requested by the sponsor within 30 days of this acknowledgement.

If the proposed structure were reduced in height to not exceed 0 feet above ground level (476 feet above sea level), it would not exceed Part 77 obstruction standards.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

SIGNED Armando Castro Specialist, Systems Management Branch
(404) 305-5585.
ISSUED IN: College Park, Georgia 03/16/94

ANY HEIGHT EXCEEDING 575' AMSL WILL HAVE A SUBSTANTIAL ADVERSE EFFECT ON INSTRUMENT ALTITUDES AT CULEBRA AIRPORT. EVEN IF REDUCED TO 575' AMSL A FURTHER STUDY WOULD BE REQUIRED.

LAW OFFICES
BROWN NIETERT & KAUFMAN, CHARTERED
SUITE 660
1920 N STREET, N.W.
WASHINGTON, D.C. 20036

Exhibit C

TEL (202) 887-0600
FAX (202) 457-0126

April 5, 1994

BY FACSIMILE (404) 305-5572
W/MAIL CONFIRMATION

Mr. Armando Castro
Federal Aviation Administration
P.O. Box 206363
Atlanta, GA 30320

Re: Aeronautical Study No.
94-ASO-0194-OE

Dear Mr. Castro:

With reference to the above-captioned aeronautical study, please conduct a further study assuming a height above ground for the antenna of 99 feet. At that height, the height of the structure will be 575 feet above mean sea level (AMSL). As your March 16, 1994 letter indicates, a height above 575 feet AMSL at the proposed site will have a substantial impact on instrument altitudes at the Culebra Airport. A proposal for a height of 575 feet or less is entitled to further study.

It is our hope that at the reduced antenna height, a determination of no hazard will issue. We respectfully request expedited consideration of this request as a determination of no hazard is one of the last steps before the applicant's FCC application can be granted.

Please give me a call if you have any further questions. Thank you in advance for your cooperation.

Sincerely yours,



Scott C. Cinnamon

cc: Aurio A. Matos
Gil Moor

c:\wp51\scc\culebra\faastud.ltr



US Department
of Transportation

Federal Aviation
Administration

FAA, Airspace & Procedures, AWP-530
P.O. Box 92007, WWPC
Los Angeles, CA 90009

Exhibit D

IN REPLY REFER TO
AERONAUTICAL STUDY
NO. 94-ZWP-332-0E

DETERMINATION OF NO HAZARD TO AIR NAVIGATION

SPONSOR	John Edward Ostlund 670 P Street Fresno, CA 93721		CONSTRUCTION LOCATION	
			PLACE NAME	
			Fresno, California	
			LATITUDE	LONGITUDE
	(NAD 27)	36-44-07	119-47-10	
	(NAD 83)	36-44-06.81	119-47-13.51	
CONSTRUCTION PROPOSED	DESCRIPTION Mast atop existing building; FM 99.3 MHz/5.03 kw	HEIGHT (IN FEET)		
		ABOVE GROUND	ABOVE MSL	
		341'	633'	

An aeronautical study of the proposed construction described above has been completed under the provisions of Part 77 of the Federal Aviation Regulations. Based on the study it is found that the construction would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the construction would not be a hazard to air navigation provided the following conditions are met.

Conditions

See Narrative

Supplemental notice of construction is required any time the project is abandoned (use the enclosed FAA form), or

- ☒ At least 48 hours before the start of construction (use the enclosed FAA form)
- ☒ Within five days after the construction reaches its greatest height (use the enclosed FAA form)

This determination expires on **November 10, 1994** unless

- (a) extended revised or terminated by the issuing office;
- (b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for a construction permit is made to the FCC on or before the above expiration date. In such case the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies the application.

NOTE: Request for extension of the effective period of this determination must be postmarked or delivered to the issuing office at least 15 days prior to the expiration date.

This determination is subject to review if an interested party files a petition on or before **April 30, 1994**. In the event a petition for review is filed, it should be submitted in triplicate to the Manager, Flight Information and Obstructions Branch, AAT-210 Federal Aviation Administration, Washington, D.C. 20591 and contain a full statement of the basis upon which it is made.

This determination becomes final on **May 10, 1994** unless a petition for review is timely filed, in which case the determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

An account of the study findings, aeronautical objections, if any, registered with the FAA during the study, and the basis for the FAA's decision in this matter will be found on the following page(s).

If the structure is subject to the licensing authority of the FCC, a copy of this determination will be sent to that Agency.

This determination, issued in accordance with FAA Part 77, concerns the effect of this proposal on the safe and efficient use of the navigable airspace by aircraft and does not relieve the sponsor of any compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

SIGNED

Harvey R. Riebel

TITLE **Manager, System Management Branch**

ISSUED IN

Hawthorne, California

ON

March 31, 1994

Notice of Proposed Construction or Alteration.

Aeronautical Study Number

Exhibit E

U.S. Department of Transportation
Federal Aviation Administration

1. Nature of Proposal		2. Complete Description	
A. Type <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Alteration *	B. Class <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Temporary (Duration _____ months)	C. Work Schedule Dates Beginning <u>Upon FCC</u> End <u>approval</u>	
* If Alteration, provide previous FAA Aeronautical Study Number, if available:			
3A. Name, address, and telephone number of individual, company corporation, etc. proposing the construction or alteration. (Number, Street, City, State, and Zip Code) John Edward Ostlund 670 P Street Fresno, CA 93721 (209) 268-9741 Area Code Telephone Number		Please describe, on a separate sheet of paper if necessary, the proposed construction or alteration. A. For proposals involving transmitting stations, include effective radiated power (ERP) and assigned frequency of all proposed or modified transmitters on the structure. (If not known, give frequency band and maximum ERP). B. For proposals involving overhead wire, transmission lines, etc., include the size and the configuration of the wires and their supporting structures. C. For all proposals, include site orientation, dimensions, and construction materials of the proposed or altered structure. D. Optional— Describe the type of obstruction marking and lighting system desired for your structure. The FAA will recommend appropriate marking and lighting for the structure in accordance with the standards of Advisory Circular AC 70/7460-1. An FAA marking and lighting recommendation will reflect the minimum acceptable level of conspicuity necessary to warn pilots of the presence of an object. However, the FAA, under certain circumstances, will not object to the use of a system (such as a medium intensity flashing white light system or a dual lighting system) other than the recommended standard.	
3B. Name, address and telephone number of proponent's representative, if different than 3A. above. Eric S. Kravetz Brown Nietert & Kaufman 1920 N Street, N.W., Suite 660 Washington, DC 20036 (202) 887-0600 Area Code Telephone Number			
4. Location Of Structure		5. Height and Elevation (no nearest foot)	
A. Coordinates (to hundredths of seconds, if known) Latitude 0' 36" 44' 07" Longitude 0' 119" 47' 10"	B. Nearest City or Town and State Fresno, CA (1) Distance to 4B — (2) Direction to 4B —	C. Nearest public or military airport, heliport, flightpark, or seaplane base Fresno Chandler Downtown (1) Distance from structure to nearest point of nearest runway 1.6 miles (2) Direction from structure to airport 256° True	A. Elevation of site above mean sea level. 292 B. Height of structure including all appurtenances and lighting above ground or water. 341 C. Overall height above mean sea level (A + B) 633
4D. Source of coordinate information for item 4A. above. <input checked="" type="checkbox"/> USGS 7.5' Quad Chart <input type="checkbox"/> Survey <input type="checkbox"/> Other Specify Indicate the reference datum of the coordinates, if known <input type="checkbox"/> NAD 27 <input type="checkbox"/> NAD 83 <input type="checkbox"/> Other Specify		4E. Describe, on a separate sheet of paper, the location of the site with respect to highways, streets, airports, prominent terrain features, existing structures, etc. Attach a copy of a U.S. Geological Survey quadrangle map 7.5 minute series (or equivalent) showing the construction site. If available, attach a copy of a documented site survey with the surveyor's certification.	

FAILURE TO PROVIDE ALL REQUESTED INFORMATION MAY DELAY PROCESSING OF YOUR NOTICE

Notice is required by Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) pursuant to Section 1101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. § 1501). Persons who knowingly and willfully violate the Notice requirements of Part 77 are subject to a civil penalty of \$1,000 per day until the notice is received, pursuant to Section 901(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. § 1471(a)) as well as the fine (criminal penalty) of not more than \$500 for the first offense and not more than \$2,000 for subsequent offenses, pursuant to Section 902(a) of the Federal Aviation Act of 1958 as amended (49 U.S.C. app. § 1472(a)).

I HEREBY CERTIFY that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to obstruction mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date 3/1/94	Typed or Printed Name and Title of Person Filing Notice Eric S. Kravetz	Signature <i>Eric S. Kravetz</i>
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FOR FAA USE ONLY FAA will either return this form or issue a separate acknowledgement.

The Proposal:		Supplemental Notice of Construction, FAA Form 7460-2, is required any time the project is abandoned, or	
<input type="checkbox"/> Does not require a notice to FAA.	<input type="checkbox"/> At least 48 hours before the start of construction.		
<input type="checkbox"/> is not identified as an obstruction under any standard of FAR, Part 77, Subpart C, and would not be a hazard to navigation.	<input type="checkbox"/> Within five days after the construction reaches its greatest height.		
<input type="checkbox"/> is identified as an obstruction under the standards of FAR, Part 77, Subpart C, but would not be a hazard to navigation.	This determination expires on _____ unless: (a) extended, revised or terminated by the issuing office; (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit is made to the FCC on or before the above expiration date. In such cases the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies the application.		
<input type="checkbox"/> Should be obstruction <input type="checkbox"/> marked <input type="checkbox"/> lighted per FAA Advisory Circular 70-7460-1, Chapters _____	NOTE: Request for extension of the effective period of this determination must be postmarked or delivered to the issuing office at least 15 days prior to the expiration date.		
<input type="checkbox"/> Obstruction marking and lighting are not necessary.	If the structure is subject to the licensing authority of the FCC, a copy of this determination will be sent to that agency.		

Remarks			
NAD 83 Coordinates (Use these coordinates for any future correspondence with the FAA)	Latitude	Longitude	
Issued in	Signature	Date	

CERTIFICATE OF SERVICE

I, Phyllis Lee, do certify that on this 14th day of April, 1994, a copy of the foregoing was sent via first class mail, postage prepaid or delivered, as indicated, to the parties set forth below:

Honorable Joseph A. Marino, Chairman
The Review Board
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554 *

Honorable Norman B. Blumenthal
The Review Board
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554 *

Honorable Marjorie Reed Greene
The Review Board
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554 *

Allan Sacks, Chief of Law
The Review Board
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554 *

Audrey P. Rasmussen, Esq.
David L. Hill, Esq.
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

Gary Schonman, Esq.
Hearing Branch
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554 **

Chief, Data Management Staff
Audio Services Division
Federal Communications Commission
1919 M Street, N.W., Room 350
Washington, D.C. 20554 **

* - via hand delivery